

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

JANICE HARGROVE WARREN

PLAINTIFF

v.

Case No. 4:19-cv-00655-BSM

MIKE KEMP, et al.

DEFENDANTS

**PLAINTIFF'S BRIEF IN SUPPORT OF HER MOTION TO CLARIFY ITS ORDER
MODIFYING SUBPOENAS COMMANDING WITNESSES TO APPEAR FOR TRIAL**

BACKGROUND

This matter is an employment discrimination, Title VII, 42 U.S.C. §§ 1981 and 1983, and breach of contract case brought by Dr. Janice Warren ("Dr. Warren"), Assistant Superintendent for Equity and Pupil Services ("Asst. Sup. Equity") and former Interim Superintendent, against her employer Pulaski County Special School District ("PCSSD"). This Court has subject matter jurisdiction over this cause of action under 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, specifically 42 U.S.C. §§ 1981, 1983, 2000e-2(a)(1), 2000e-2(a)(2), 2000e-3(a), and 2000e-5(f)(1). Furthermore, this Court has Supplemental Jurisdiction over Dr. Warren's State law claim against PCSSD pursuant to 28 U.S.C. § 1367(a).

This Court scheduled the trial of this matter before a jury for the week of September 20, 2021. In preparation for her trial, plaintiff served witnesses with subpoenas pursuant to Fed. R. Civ. Pro. 45; 9A Fed. Prac. & Proc. Civ. § 2461 (3d ed. April 2021) (a party may command the attendance of a witness for any reason). Each subpoena complied with the requirements of Fed. R. Civ. Pro. 45 (a)(1) and commanded the person to whom it was directed to appear on a specified date and time during the week of September 20, 2021. Fed. R. Civ. Pro. 45 (a)(1)(A)(iii); 9A Fed. Prac. & Proc. Civ. § 2455 (3d ed. April 2021). On September 15, 2021,

this Court rescheduled the trial. On September 22, 2021, the trial was set for the week of January 3, 2022. The cost for service of each subpoena ranged from \$60 to \$75. The plaintiff filed a timely motion to modify her previously issued subpoenas. See, generally, Fed. R. Civ. Pro. 45 (d)(3)(iv); see also *Mullins v. U.S. Bank*, No. 2:05-CV-1002, 2006 WL 8445564, at *3 (S.D. Ohio Dec. 14, 2006) (waste of resources a factor in the court's denial of the plaintiff's request that defendants withdraw and refile their *subpoenas duces tecum* served without notice to the plaintiff). On September 24, 2021, the Court ordered sixteen subpoenas to be modified to avoid an undue burden on the plaintiff. The modified subpoenas commanded each witness to appear during the week of January 3, 2021. On October 20, 2021, the plaintiff served Dr. Linda Remele with a subpoena commanding her to appear on January 3, 2021.

On December 2, 2021, this Court rescheduled the trial of this matter to the week of February 14, 2022. The continuance rendered the command of the previously modified subpoenas ineffective. To avoid an undue burden and minimize the costs borne by the plaintiff to obtain the appearance of her witnesses, the plaintiff requested this Court to modify the command of her previously served subpoena by ordering each witness to appear during the week of February 14, 2022. See, generally, Fed. R. Civ. Pro. 45 (d)(3)(A)(iv). On December 8, 2021, this Court granted the plaintiff's motion. The Court's order modified the command of sixteen previously served subpoenas. It appears that plaintiff's motion did not adequately notify the Court that the number of subpoenas had increased after the Court's September 24, 2021 order.

CONCLUSION

To facilitate the orderly and expeditious processes of the trial of this matter, the plaintiff exercised diligence to serve her witnesses with subpoenas in advance of trial. Therefore, plaintiff

requests this Court to clarify that its December 8, 2021, order applies to the subpoena served after this Court's September 24, 2021, order on Dr. Linda Remele.

Respectfully submitted this 10th day of December, 2021,

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